

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: PAYPHONE SERVICES	DOCKET NO. INU-99-1
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ORDER INITIATING INVESTIGATION

(Issued April 23, 1999)

INTRODUCTION

On March 22, 1999, and March 25, 1999, Pay Phones Concepts, Inc. (Complainant), filed two complaints with the Board. The first complaint is directed at the cost of the business lines that payphone services providers (PSPs) order from local exchange service providers, while the second complaint is directed at some of the features included in those business lines (specifically, the call signaling that may or may not be provided with those lines). The two complaints raise different issues and rely upon different sources for Board jurisdiction; the first complaint appears to be concerned with rates and the duties that may have been assigned to the Board by the federal Telecommunications Act of 1996, while the second complaint appears to be concerned with quality of service, competitive fairness, and customer service issues, all of which could be considered by the Board under state law.

The Board is initiating this investigation to receive comment and information from local exchange service providers and other interested persons. The Board is

specifically directing the local exchange service providers (individually or through their associations) to answer the complaints, in writing, as required by IOWA CODE § 476.3(1) (1999). The Board is identifying certain issues and questions on which it specifically seeks comment from any interested persons, as described below, but the Board is not limiting the scope of any answer to the issues and questions identified below. Answers and comments should include any information the party believes may be helpful to the Board in deciding what action, if any, to take with respect to these complaints.

1. The March 22, 1999, "Formal Complaint."

The First Complaint, filed on March 22, 1999, states that § 276 of the Telecommunications Act of 1996 (47 U.S.C. § 276) requires the implementation of regulations by the Federal Communications Commission designed to promote competition among PSPs and provide the widespread deployment of payphone services for the benefit of the general public. The FCC subsequently promulgated regulations to implement § 276 through four orders¹. As a result of these orders, all local exchange companies are required to have in effect both federal and state tariffs for payphone features and options offered to PSPs on an unbundled basis. The FCC regulations further require that the tariffs be cost-based, nondiscriminatory, and consistent with the requirements of § 276 and the Computer III guidelines, including the federal "new services" test. Review of the state payphone

¹ In the Matter of Implementation of the Pay Telephone Reclassification and Competition Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128 (Sept. 10, 1996); Order on Reconsideration, 11 FCC Rcd 21233 (Nov. 8, 1996); First Common Carrier Bureau Order (April 4, 1997); and Second Common Carrier Bureau Order (April 15, 1997).

tariffs for compliance with these federal requirements, including the new services test, was delegated to the states.

The new services test is set out at 47 C.F.R. § 61.49(g)(2) and basically limits the rate to the cost of providing the specific service in question plus "a reasonable portion of the carrier's overhead costs." This seems to be the test that Complainant is asking the Board to apply to the various tariffed rates that Iowa local exchange service providers use to provide service to PSPs².

The gist of the First Complaint appears to be a request that the Board review local exchange service providers' rates as applied to payphones to determine whether they satisfy the new services test. The Board is interested in comment concerning the value of conducting such a proceeding, particularly if PSPs are being served in Iowa using standard business lines. While this might appear to support an argument that a review of those rates as applied to only one service is inappropriate, the Board is aware that at least one state administrative law judge has concluded that the fact that the relevant services are included in a general rate tariff, rather than a separate tariff limited to payphone services, does not alter the state's duty, under federal law, to review the rates as they are applied to PSPs³.

While the FCC assigned the review of state payphone services tariffs to the various state agencies, it also left an opening for interested persons to petition the

FCC for an initial determination if the state declines to act. The materials provided with the First Complaint indicate the FCC has accepted a referral from the state of Wisconsin to determine whether the local exchange service tariffs in that state are in compliance, although no documentary evidence is provided and there is no explanation of why the matter was referred. Presumably, the Complainant may ask the FCC to act in this matter if the Board declines. The Board is interested in comment concerning this option.

Finally, if the Board decides to initiate a review of the rates charged to PSPs by local exchange service providers, then the Board must also consider whether that review should be limited to "local exchange carriers" as defined in IOWA CODE § 476.96(5). State law does not appear to give the Board rate-regulatory authority over the remaining local exchange service providers. However, it could be argued that the federal act confers that jurisdiction on either the FCC or the Board, and that the FCC has delegated its initial jurisdiction to the Board. The Board invites comment on this question.

2. The March 25, 1999, "Complaint."

The Second Complaint, which is apparently directed at all local exchange service providers operating in Iowa, asks the Board to require those companies to provide certain signaling on all central office lines offered to the public. The Complainant alleges that all telephone company switches with basic touch-tone capabilities have these signaling features available. The Complainant also alleges these signals are required by the PSP in order for it to distinguish between a call

that is answered (and for which there can be a charge) and some calls that *appear* to have been answered, but for which there should be no charge.

For example, the Complainant alleges that if a payphone customer dials a number for a cellular telephone which is not turned on or which is otherwise not available, the cellular company will typically provide a recorded message that the cell phone is unavailable. In the absence of telephone company signaling, the payphone instrument may interpret the recorded message as an answer and collect the coins for what is actually an uncompleted call. Similar problems are alleged to occur when a call is forwarded to another number, or in other situations. In each situation, the Complainant asserts, the payphone customer should not have been charged, but Complainant claims that without the necessary signals from the local exchange service provider's switch, the PSP has no reasonable way to determine the problem has occurred. The result may be customer confusion and dissatisfaction. This part of the Second Complaint appears to be directed at providing better service to payphone customers by avoiding charges when no charge should be made.

The Complainant alleges another reason for needing these signals: the prevention of certain types of fraud. One of the requested signals is a "flash" or "wink" prior to every new dial tone from the central office. Without this signal, according to the Complainant, the payphone instrument cannot always determine when a new call is being initiated. This part of the Second Complaint appears to be directed primarily at protecting PSPs from fraudulent users.

In each case, it appears the Complainant is alleging that local exchange service providers make use of some or all of these telephone company signaling features for their own pay phone instruments, giving them a competitive advantage when compared to an independent PSP.

The Complainant has not alleged any particular basis for Board jurisdiction over this matter. However, it appears the Board could assert jurisdiction under IOWA CODE §§ 476.4, 476.5, or 476.8 (1999). Section 476.4 requires every public utility to file with the Board tariffs showing the rates and charges for its public utility service and the rules and regulations under which such services are furnished, all subject to Board investigation under IOWA CODE § 476.3. Section 476.5 prohibits public utilities from subjecting any person to any unreasonable prejudice or disadvantage. Section 476.8 requires each public utility to furnish "reasonably adequate service and facilities." It could be argued that the Second Complaint raises issues that could trigger Board jurisdiction under any of these statutes, or all of them.

Accordingly, the Board is forwarding copies of this order and both complaints to U S West, GTE Midwest Incorporated, and Frontier Telecommunications Company of Iowa for an answer pursuant to IOWA CODE § 476.3 and for such other comments as each company may find appropriate. The Board is also forwarding copies of both complaints to the Iowa Telecommunications Association for comment. Finally, the Board invites

comments from any other interested persons. All answers and comments should be filed no later than 30 days from the date of this order.

IT IS THEREFORE ORDERED:

1. The Executive Secretary of the Board shall forward copies of this Order, the March 22, 1999, "Formal Complaint" filed by Pay Phone Concepts, Inc., and the March 25, 1999, "Complaint" filed by Pay Phone Concepts, Inc., to U S WEST Communications, Inc., GTE Midwest Incorporated, and Frontier Telecommunications of Iowa for an answer pursuant to IOWA CODE § 476.3 (1999). The Executive Secretary of the Board shall also forward copies of the same documents to the Iowa Telecommunications Association for comment.

2. All answers and comments referred to in Ordering Clause No. 1 shall be filed with the Board no later than 30 days from the date of this Order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Emmit J. George, Jr.

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Paula S. Dierenfeld
Executive Secretary

Dated at Des Moines, Iowa, this 23rd day of April, 1999.